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COMMITTEE FOR INFRASTRUCTURE: FOLLOW-UP FROM MEETING ON 25 MARCH 2026

Thank you for your letter of 27 March 2026 following the Committee for Infrastructure's meeting on 25 March 2026.

General Provisions of the Bill

1. A question was submitted (question 1) regarding the costs associated with SuDS. The Department responded: *"The long-term costs associated with SuDS are not yet known, as the detailed regulatory arrangements have not yet been agreed."*

Could the Department confirm whether the other elements of the Bill—particularly the flood protection grants provided for under clause 6—have been costed, and provide a breakdown of any projected expenditure?

The Department already has an evidence base for the costs involved in running the existing Homeowner Flood Protection Grant Scheme pilot scheme.

The funding of the current pilot Homeowner Flood Protection Grant Scheme (HFPGS) is allocated from DfI Rivers Directorate's existing Flood Risk Management Capital budget allocations. Due to the nature of the scheme, it can be difficult to continue to accurately forecast expenditure for the HFPGS as it is entirely demand led. The application process allows for continual monitoring of the financial aspect of the scheme with future years projections based on applications in the system and previous years spend.

The cost of the current pilot Homeowner Flood Protection Grant Scheme to the Department was £283k in 2024-2025 and is in the region of £260k for 2025-2026.

Does the Department consider it reasonable to ask Members to pass legislation in the absence of detailed costings?

This primary legislation is used to provide enabling powers to the department to create secondary legislation, which will set out more detail on the topic concerned. The primary legislation sets out the broad principles and framework of a law, while the enabling powers allow the technical details to be brought in later without needing to pass a new Act. In the case of the proposed SuDS clauses in the Bill, these set out the policy intent to regulate for SuDS. The detail of the regulatory regime will then be set out in the regulations which must be laid before, and approved by resolution of, the NI Assembly. The regulations will be supported by a robust business case which will set out the estimated costs of the proposed new arrangements. I am planning to carry out a public consultation on the proposed regulatory arrangements later this year.

Much of the rest of the Bill is cost neutral in nature or will be met within current budget.

In relation to powers for NI Water to adopt certain private drainage infrastructure ("PDI"), pre-1973, NI Water may share some costs with landowners. The exact costs are unknown at this point as the condition of PDI is often unknown until it is professionally examined by a contractor. However, NI Water would manage these costs within its agreed budget allocations.

Sustainable Drainage Systems (Clauses 2–5)

2. A question was submitted regarding the non-mandatory wording of clause 2(3) (question 3). The Department responded that *"introducing a mandatory requirement at this stage would be premature, and risk committing my Department to a fixed timeline and policy direction that may ultimately prove inappropriate once the full range of complex considerations has been assessed and consulted upon."*
3. Another question (question 5) asked whether the Department had considered introducing a regulatory requirement for developers to justify any decision not to use nature-based SuDS approaches. The response provided did not address the substance of the question because the policy does not yet appear to be sufficiently advanced.
4. Question 6 asked whether the Department had considered explicitly linking the use of SuDS for flood management purposes with wider environmental objectives, including water quality targets, nature recovery strategies, and climate change commitments. The response given was that although the Bill does not set explicit environmental targets, existing legislation already provides these, and the Bill creates the statutory framework to embed nature based SuDS that will support wider goals such as nature recovery, water quality improvement, and climate resilience through future regulations and design guidance.

5. Witnesses suggested that the Bill would benefit from greater statutory clarity, particularly under Clause 2, regarding approval processes, funding arrangements, adoption, and long-term maintenance responsibilities (question 8). They recommended clear allocation of responsibilities and explicit provision for secure, long-term funding.
6. A similar response was provided to question 9, which concerned the proposed arrangements for the long-term maintenance of SuDS.
7. Question 10 relayed a panel suggestion for a hybrid governance and approval model for SuDS. The Department noted that this option had been included in its recent consultation and stated that the responses will be examined in detail as part of the ongoing policy development process, with any resulting proposals to be addressed in future secondary regulations for the Committee to scrutinise.
8. A similar response was given to questions 11 and 12 — the former concerning proposals for a blended funding model for SuDS, and the latter relating to a hybrid model for adoption and long-term maintenance.
9. In response to question 22 on collaborative working with DAERA regarding financial penalties linked to fisheries and water-environment legislation, the Department stated that the level of financial penalties for SuDS would be set out in future secondary regulations.

Given the responses received to points 2-9, can the Department clarify whether the legislation has been brought forward prematurely given that the underlying policy has not yet been fully developed?

There are many previous examples, across a range of Departments where secondary legislative making powers are included in primary legislation to facilitate and enable further policy development. Typically, secondary legislation, such as regulations, is used to fill in technical details (such as thresholds or procedures), update or amend existing legislation quickly and implement policy changes which allow amendments to primary legislation. It is important to note that secondary legislation is still subject to Assembly scrutiny procedures. The table at **Annex A** provides some recent examples of primary legislation that provides enabling powers.

From the outset, it has always been the intention that this Bill serves as the primary legislative vehicle through which enabling powers are conferred to establish a framework for achieving the high-level policy objective of delivering nature-based SuDS, while not prescribing the detailed provisions required to give effect to that framework.

The 2022 consultation on the policy for the Bill, 'Water, Flooding and Sustainable Drainage: Improving How We Manage Water' included the proposal to provide my

Department with a power to issue future guidance on the design, approval and maintenance of SuDS. This was supported by 86% of respondents.

The primary rationale for adopting this two-stage approach is that the detailed arrangements set out through regulations can be supplemented or amended over time, as understanding of, and experience with the design and local application of SuDS, continues to mature and evolve. For example, stating who should be the approval body on the face of the Bill may prove problematic at this stage as a range of bodies have been suggested as a result of the initial consultation and this needs to be further examined and specific options for the approval body will form part of the future consultation. This will help ensure that any new regulatory arrangements are appropriately tailored to local needs and aligned with our devolved institutions.

Introducing the new regulatory regime in this evolutionary manner will help to avoid the difficulties experienced in England and Wales, where the primary legislation to mandate SuDS (Schedule 3 of the Flood and Water Management Act 2010) only came into force in Wales in 2019. It still has not been commenced in England.

Regarding your comments that developers should be required to justify any decision not to use nature-based SuDS approaches, in 2016, my Department amended the Water and Sewerage Services (NI) Order 2006 to remove the automatic right to connect. NI Water may refuse a surface water connection if suitable alternatives exist and those alternatives can be landscaped SuDS, so NI Water can already seek justification for not using nature-based SuDS.

It should be noted that any future SuDS regulations for NI will be supported by a robust business case which will set out the estimated costs of the proposed new arrangements. I am planning to carry out a public consultation on the proposed regulatory arrangements later this year.

10. Question 7 concerns the definition of SuDS in Clause 4(1). While the Department demonstrated in its earlier response (question 4) an understanding of the four pillars of SuDS, it stated that Clause 4(1) is intended only to provide a 'minimum legal definition'.

Has the Department considered whether a more ambitious or comprehensive definition would be appropriate?

In addition to nature-based features such as swales and ponds, the definition of '*sustainable drainage system*' must also cover structural or hard systems, currently allowed for under existing legislation, such as underground tanks which slow the rate of water entering the sewers or watercourses but do not offer any wider environmental or placemaking benefits. It would, therefore, be inappropriate to extend the definition of '*sustainable drainage system*' beyond flow reduction as this would exclude structural or hard systems.

11. Question 16 was asked in relation to resource capacity, and the Department stated that it will develop detailed training, staffing, and capability programmes for all relevant authorities once the policy has been finalised.

Given that no detailed costings are yet available, how can the Department be confident in making this commitment?

My officials are developing a detailed Business Case which will set out the costs of establishing and operating any new regulatory regime. This will include the costs of any necessary staff recruitment and training, along with any outsourcing to secure the necessary skills. It is also likely that the new arrangements will be introduced in phases. This will facilitate learning, testing and changes to be made before implementing any new arrangements in full.

Flood Protection and Remediation (Clauses 6–9)

12. The response indicated that Clauses 6–9 are not relevant to SuDS. While this section addresses broader drainage matters, could the Department clarify whether a SuDS scheme that alters a watercourse, connects directly to one, or involves significant flood management infrastructure might fall within the definition of “drainage works” under the Drainage (NI) Order 1973, and therefore be subject to environmental assessment under Clause 8?

My officials have confirmed that the purpose of SuDS is to collect, store and convey surface water, as an alternative to traditional piped drainage systems. The construction of SuDS in a new development should not involve alterations to a watercourse or involve significant flood management infrastructure and, therefore, do not fall within the definition of “drainage works” under the Drainage (NI) Order 1973. As is the case for any new discharge to a watercourse, consent for a SuDS system to discharge to a watercourse must be provided by my Department in line with Schedule 6 of Drainage (NI) Order 1973.

In addition, any new development will be subject to existing planning requirements which may necessitate an environmental impact assessment as part of the planning application.

I hope this information is helpful.

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Minister for Infrastructure

Examples of Secondary Legislative Making Powers in NI Primary Legislation

Primary Legislation	Purpose
The School Uniforms (Guidelines and Allowances) Act (Northern Ireland) 2026	This Act provides the Department of Education the enabling power to issue guidelines on school uniform policies and to extend eligibility for school clothing allowances payable by the Education Authority. The policy detail is set out in the Guidelines themselves.
The Agriculture Act (Northern Ireland) 2025	This Act makes legacy Fruit and Vegetable Aid Scheme (FVAS) funding discretionary and provides DAERA with the scope to amend the law governing that scheme and also the legacy Agri-food Information and Promotion Scheme, so that they can be amended as needed to reflect future policy developments.
The Climate Change Act (Northern Ireland) 2022,	This Act establishes long term targets and statutory duties but expressly anticipates extensive use of regulations to deliver policy over time. Delegated powers allow DAERA to: • set carbon budgets; • prescribe monitoring and reporting arrangements; and • establish sector specific obligations.
The Planning Act (NI) 2011	This Act sets out the framework for a reformed planning system, while intentionally leaving much of the operational detail to secondary legislation made later by the then Department of the Environment. Examples of matters left to regulations include: • Development management procedures • Local development plan processes • Permitted development rights • Fees, enforcement processes, and time limits The primary Act enabled future regulations to be made once policy choices were refined and operational experience developed.

Primary Legislation	Purpose
The Health and Social Care Reform Act (Northern Ireland) 2009	This Act reorganised health and social care structures but deliberately deferred detail on governance, commissioning, and operational functions to regulations. Regulation making powers were used to: • Define the detailed functions of new bodies • Prescribe appointment processes • Set procedural and operational requirements This allowed reform to proceed while giving DHSSPS flexibility to refine policy design during and after implementation—particularly important given the scale of health reform.
The Water and Sewerage Services (Northern Ireland) Order 2006	Most directly relevant to this Bill, the 2006 Order is arguably the strongest and clearest example of enabling flexibility and future proofing via regulations. The Order established the overall regulatory and institutional framework for water and sewerage services (creation of a regulated undertaker, economic regulation, consumer protection, environmental duties). It intentionally left large amounts of detail to secondary legislation, recognising that full policy and operational detail could not be settled when the Order was made. Secondary legislation making powers include: • Charging schemes and metering arrangements • Consumer protection procedures • Water quality standards • Trade effluent controls • Enforcement, penalties, and appeals • An order to allow my Department to continue to pay a subsidy to NI Water, in lieu of domestic water charges.